

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ROSARIO TINA and
JESUS G. TINA,

Plaintiffs,

vs.

COUNTRYWIDE HOME LOANS, INC.,
AMERICA'S WHOLESALE LENDER,
RECONTRUST COMPANY,

Defendants.

CASE NO. 08 CV 1233 JM (NLS)

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION TO
DISMISS**

(Doc. No. 13)


Plaintiffs Rosario Tina and Jesus G. Tina, proceeding pro se, filed this action on July 10, 2008 against mortgage lender Countrywide Home Loans, Inc. ("Countrywide"), which does business as America's Wholesale Lender, and Countrywide's trustee for foreclosure servicing, ReconTrust Company ("ReconTrust"). (Doc. No. 1.) Concurrently, Plaintiffs filed an *ex parte* application for a temporary restraining order ("TRO") and preliminary injunction to stay the foreclosure of their property scheduled for July 11, 2008. (Doc. No. 3.) The court denied the TRO request on August 5, 2008. (Doc. No. 12.) Defendants moved to dismiss the complaint under Fed. R. Civ. Pro. 12(b)(6), and, in the alternative, for a more definite statement under Rule 12(e). (Doc. No. 13.) On October 30, 2008 the court granted in part and denied in part the motion to dismiss, granted the motion for a more definite statement on the remaining claims, and gave Plaintiffs 45 days leave to file a First

1 Amended Complaint. (Doc. No. 22.)

2 On December 22, 2008, Plaintiffs attempted to file a document entitled "First Amended
3 Complaint." The document was rejected as untimely, having been filed beyond the 45-day leave
4 granted by the court. (Doc. No. 24.) In addition, the court rejects the document for failure of service
5 as the accompanying certificate of service was unsigned, and is therefore invalid, and it appears the
6 document was never served on the defendants in this case. Further, although the court provided
7 specific guidance as to the required content of a First Amended Complaint, Plaintiffs' submission
8 generally reiterates the allegations of the original Complaint and cures none of the deficiencies
9 outlined by in the court's October 30 order. For these reasons, Plaintiffs' First Amended Complaint
10 is **REJECTED** for filing.

11 **IT IS SO ORDERED.**

12 DATED: January 5, 2009

13 
14 Hon. Jeffrey T. Miller
United States District Judge

15 cc: All parties
16
17
18
19
20
21
22
23
24
25
26
27
28